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EXHIBIT 6 HUH
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HB 267

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HB 267

For the record, my name is Scott Crichton. I have been privileged to serve as Executive Director of the American Civil Liberties Union of Montana since 1988. The ACLU is a non-partisan membership-based organization with some 2,000 households in Montana counted among our membership. We are an affiliate of the national ACLU which has some 550,000 members. Simply put, ACLU's mission is to defend the Constitution and the Bill of Rights.

I appear today as an informational witness. We opposed a similar bill in 2007.

That bill was SB 326 Senator Schmidt (D – Great Falls) Providing For A Controlled Substance Prescription Drug Database And Monitoring Program. This legislation would create a government monitored database to deter abuse.

ACLU voiced serious reservations regarding privacy rights and at the chairman's request worked with State Board of Pharmacy and the Montana Department of Labor to amend the bill. Passed Senate 3rd Reading 43/7.

We raised concerns about violations of privacy when this bill was introduced to the Senate Public Health, Welfare and Safety Committee and were asked to work with the sponsor to amend the bill to address the issues raised. It was amended to:

- 1) comport with HIPA's confidentiality standards;
- 2) require a search warrant for police to access the database;
- 3) prohibit any commercial use of the database information;
- 4) prohibit database information being used as evidence in civil or criminal proceedings;
- 5) require that after 3 years the record be purged unless part of an active investigation;
- 6) and to include civil penalties up to \$250,000 per violation for unlawful disclosure of database information.

The bill was transmitted to the House where it was tabled in Judiciary on 04/03/07. These monitoring programs exist in many other states and although we were involved in crafting language to make it more palatable, they continue to pose serious concerns in regards to privacy.

Later in 2007, I received an invitation from Trudi Schmidt and the Board of Crime Control to attend a conference in Washington, D.C. on State Prescription Monitoring Programs. I attended

the conference December 6-7, 2007, along with a delegation of Montanans selected by the Board of Crime Control. I found the presentations interesting and at the same time disturbing. A few things stuck with me.

1. It appeared to me to be more of a law enforcement conference than a health care conference.
2. The war stories told from states that had passed bills since the last time these folks gathered showed enormous resistance in many cases (and not from the ACLU) in getting measures in place. Often it took extraordinary maneuvering to get the bills passed.
3. I recall hearing that for these databases to work best they should reside with law enforcement, and for them to function properly, they needed to be interconnected state-by-state for a national database network.

At the end of the conference, our Montana delegation sat down together and discussed what we had learned and shared what we thought. I continued to share my concerns about privacy and who would have access to these data bases.

Coincidentally, at the same time from our Washington Legislative Office, I received a copy of a report on Fusion Centers. I'd not heard that term prior to that, but since then I have tried to educate myself as to what they are and how they operate.

Montana's Fusion Center, the Montana All Threat Intelligence Center (MATIC), is administered by the Montana Department of Justice Division of Criminal Investigation, but as reported in the Great Falls Tribune, it is a joint venture with the Department of Corrections, the Department of Military Affairs and a regional intelligence network called the Rocky Mountain Information Network. Five of MATIC's full time employees are CI employees. The partner agencies each provide one employee. The FBI also has an assigned analyst to the MATIC.

The Montana Department of Labor and Industry's database (MISTICS) is one of at least 13 databases MATIC has access to.

In response to a freedom of information request filed by Rep. Brady Wiseman, the Department of Justice's Division of Criminal Investigation indicated that MATIC does not use an administrative subpoena to obtain information, and that state law does not allow for the use of administrative subpoenas by local and state law enforcement.

I have attached a copy of the ACLU report, as well as a September 2007 Report by the Manhattan Institute "State Fusion Center Processes and Procedures: Best Practices and Recommendations"; and a Cato Institute Policy Analysis from December 2006 entitled "Effective Counterterrorism and the Limited Role of Predictive Data Mining."

I urge your careful deliberations on HB 267.